

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 733 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

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T.U. PATEL

Versus

COMMISSIONER OF SALES TAX GUJARAT STATE

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Appearance:

MR RJ OZA for Petitioners

MR MANKAD FOR MR BAMBHANIA, for Respondent No.1 to 4

Respondents nos.5 to 8 served.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/09/96 & 13/09/96

ORAL JUDGEMENT

The petitioners are the Sales Tax Inspectors (Enforcement), who are aggrieved by the order made on 29th January 1993 whereunder they have been transferred as Sales Tax Inspectors (Administration).

The petitioners have admitted in the petition

that the petitioners are transferable to perform any type of duty i.e., that of assessment; audit; administration; appeals; professional tax; enforcement etc., as Sales Tax Inspectors. It is also admitted that the Sales Tax Inspectors appointed in the Enforcement branch will continue to be as such for a period of three years. The petitioners were transferred as Sales Tax Inspectors (Enforcement), on 1st July 1992. The petitioners' grievance was against the order of transfer which was made within a period of few months from their transfer to the Enforcement branch. The petitioners have also relied upon the policy decision contained in the Circular dated 24th May 1988 issued by the Commissioner of Sales Tax. The said instructions provide, inter alia, that, no Sales Tax Inspector should be continued in Enforcement branch for more than three years. While considering such tenure, all the services rendered in the Enforcement branch should be taken into consideration. It further provides that the person who has served in the Enforcement branch for a period of three years shall not be again transferred to the Enforcement branch at any time.

Be it noted that the petitioners herein were transferred to the Enforcement branch, on 1st July 1992. They have been continued in the Enforcement branch under the interim orders made by this Court on this petition. The petitioners have thus served in the Enforcement branch for more than four years. In view of the aforesaid policy, the petitioners are now required to be transferred from the Enforcement branch. Further, in the affidavit-in-reply to the petition, it has been pointed out that the petitioners have never served in the Administration branch earlier and that they were required to be transferred to the Administration branch.

The petitioners have also contended that several officers, particularly respondents nos.5 to 8, have been continued in Enforcement branch for several years. The impugned action of the respondents, therefore, is arbitrary and discriminatory. They have also contended that on account of the impugned transfer, petitioners will lose special pay to which they are entitled while they are serving in the Enforcement branch.

Since the petitioners have served their term in the Enforcement branch, they are liable to be transferred out of the said branch. I, therefore, do not express any opinion on the merits of the contentions raised by either of the parties. However, the respondents shall be at liberty to transfer the petitioners from the Enforcement

branch.

Mr.Oza has submitted that though this Court by its order dated 3rd February 1993 stayed the further implementation of the impugned order of transfer, the petitioners were not permitted to resume duty till July 1993. The said allegation has not been denied by the respondents. In view of the same, the respondents are directed to treat the period from 3rd February 1993 to 28th July 1993 as the period spent on duty by the petitioners. The petitioners shall be entitled to the wages for such period. The petition is allowed to the aforesaid extent only. Rule is made absolute accordingly. Interim relief is vacated. Parties shall bear their own costs. Learned Advocate Mr. Oza has prayed that the interim order operating in favour of the petitioners be continued for a further period of two weeks. The request is rejected.

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